

upon” issues - no amount of time afforded Supra would ever convince BellSouth to agree to language BellSouth did not want to agree to.

76. Given the FPSC’s only comments on Supra’s explicit request for assistance under the Act, it is evident that the FPSC was and is unwilling to act and to comply with its duty of resolving “all” issues clearly and specifically set forth in Supra’s petition.

77. In furtherance of its justification of its overall decision the FPSC wrote the following: “It is clear that no alternative language was filed by Supra on the required date, July 15, 2002. If Supra continued to disagree with BellSouth’s interpretation of issues and inclusive language, Supra could have formulated its own language and submitted that to the Commission in an attempt to comply with the Commission’s Order.” See pg. 15-16 of Exhibit H. In this comment, however, the FPSC does **not** even address the “agreed upon” issues at all.

78. The FPSC’s authority to “pick and choose” language is narrowly focused on language that implements its order with respect to those issues, and those issues only, that have been the subject of a full and fair evidentiary hearing. Unlike the FCC, the FPSC does not possess regulations authorizing the state commission to utilize a form of “final offer arbitration” as described in 47 C.F.R 51.807(d). Filing language with the FPSC with respect to the “agreed upon” issues and asking the FPSC to “pick and choose” would in effect have been a waiver of Supra’s right to the statutory requirements that ILECs continue to negotiate in good faith,⁴ that in the absence of an agreement that a

⁴ Under 47 U.S.C. § 252(b)(5), the refusal of any party to continue negotiations after the State Utilities Commission has started to resolve the disputed issues, shall be considered to be a failure to negotiate in good faith as required by 47 U.S.C. § 251(c)(1).

CLEC may avail itself of mediation and if necessary arbitration for those issues which remain unresolved.

79. Supra's petition focuses on whether the FPSC has acted and not on the quality of an alleged FPSC action. The comments from the FPSC Order demonstrate that no action was taken on the unresolved issues.

80. BellSouth's refusal to include language consistent with the parties' "agreed upon" issues is similar to the circumstances that arose in In the Matter of Petition of WorldCom, Inc., et al Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc., Docket Nos. 00-218, 00-249, 00-251, Memorandum Opinion and Order (adopted July 17, 2002).

81. In this above referenced case, the ILEC made certain concessions and compromises on several issues prior the evidentiary hearing. Some of these agreements were not incorporated into the proposed contract. With respect to these circumstances, the FCC wrote: "In those instances where one party clearly indicated that it supported or no longer opposed the other party's conceptual proposal or contract language or indicated that it was willing to modify its own proposal to reflect the other party's concerns, we determine that it is appropriate to direct the parties to submit language conforming to such statements." *Id.* at para. 32.

82. In the present matter, BellSouth, likewise, clearly indicated that it did not oppose Supra's conceptual proposals or proposed language. But for this understanding Supra would not have agreed to withdraw its issues properly set forth in its response filed with the FPSC. Under these circumstances (and in accordance with the precedent set

forth above) BellSouth should have been required to submit language conforming to such agreements.

83. The FCC has found that an ILEC, like BellSouth, has superior bargaining power and little incentive to agree to terms that will strip BellSouth of further customers. The Act was designed to allow CLECs, like Supra, the opportunity to present its issues to a State commission, if a dispute in language existed or if the ILEC fails "to continue to negotiate in good faith." In this instance, BellSouth has refused to continue to negotiate at all. Supra has reasonably relied on BellSouth's assurances in agreeing to withdraw issues properly placed before the FPSC. Supra formally requested that the FPSC order BellSouth to negotiate in good faith, order mediation and if necessary hold a further evidentiary hearing on all outstanding and unresolved issues.

CONCLUSION

For the foregoing reasons, Supra respectfully requests that the FCC preempt the jurisdiction of the FPSC regarding all remaining unresolved issues between Supra and BellSouth; conduct such proceedings as it deems necessary to determine the merits of the remaining unresolved issues; following such proceedings, issue an order resolving the issues between Supra and BellSouth; and grant such other relief as the FCC may deem just and reasonable.

**SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.**

2620 S.W. 27th Avenue

Miami, Florida 33133

Telephone: (305) 476-4248

Facsimile: (305) 443-9516

By: 

**BRIAN CHAIKEN
MARK BUECHELE**

CERTIFICATE OF SERVICE

I hereby certify that on this 15th of August 2002, true and correct copies of the foregoing Petition of Supra, pursuant to Section 252(e)(5) of the Communications Act, including all exhibits and attachments thereto, were served via Federal Express on:

Wayne Knight
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy B. White, Esq.
BellSouth Telecommunications Inc.
Museum Tower
150 West Flagler Street
Suite 1910
Miami, Florida 33130

**SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.**
2620 S.W. 27th Avenue
Miami, Florida 33133
Telephone: (305) 476-4248
Facsimile: (305) 443-9516

By: 

BRIAN CHAIKEN,
General Counsel -
MARK BUECHELE, Esq.
ADENET MEDACIER, Esq.
PAUL TURNER, Esq.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554**

In the Matter of)
)
Petition of **Supra Telecommunications & Information**)
Systems, Inc. ("Supra"))
Pursuant to Section 252(e)(5) of the)
Communications Act for Preemption of the)
Jurisdiction of the Florida Public Service Commission) CC Docket No. _____
("FPSC") Regarding the FPSC's failure to act on)
Supra's request for mediation pursuant to)
Section 252(a)(2) or subsequent arbitration pursuant to)
Section 252(b)(1) on unresolved issues clearly and)
specifically set forth in the parties' petition and)
response.

**PETITION OF SUPRA TELECOMMUNICATIONS & INFORMATION
SYSTEMS, INC. ("Supra") PURSUANT TO SECTION 252(e)(5) OF THE
COMMUNICATIONS ACT**

AFFIDAVIT OF DAVID A. NILSON

I, David A. Nilson, being duly sworn, state as follows:

1. I am Vice-President of Technology, for Supra Telecommunications and Information Systems, Inc. ("Supra"). Our business is located at 2620 S.W. 27th Avenue, Miami, Florida 33133.

2. I have knowledge of the facts set forth herein and I make this affidavit in support of Supra's Petition to the Federal Communications Commission (the "Petition") to preempt the jurisdiction of the Florida Public Service Commission ("FPSC") with respect to the FPSC's failure to act on several unresolved issues properly set forth in the parties' petition and response.

3. Supra is a "Telecommunications Carrier" pursuant to 47 U.S.C. § 153(44) and a "Local Exchange Carrier" pursuant to 47 U.S.C. § 153(26). Supra is a competitive

local exchange carrier providing local telephone services in the State of Florida pursuant to authority granted by the FPSC.

4. BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth")
BellSouth is a "Telecommunications Carrier" pursuant to 47 U.S.C. § 153(44), a "Local Exchange Carrier" ("ILEC") pursuant to 47 U.S.C. § 153(26), a "Bell Operating Company" pursuant to 47 U.S.C. § 153(4), and an "Incumbent Local Exchange Carrier" pursuant to 47 U.S.C. § 251(h). BellSouth is providing local telephone services in the State of Florida pursuant to authority granted by the FPSC. Supra is currently BellSouth's largest competitor in the State of Florida, with over 350,000 customers (80% of which are residential).

5. On or about October 5, 1999, and pursuant to 47 U.S.C. 252(i), BellSouth and Supra entered into an Interconnection Agreement which adopted all of the terms and conditions of a then-existing agreement between BellSouth and AT&T Communications of the Southern States, Inc. ("Current Agreement").

6. Section 2.1 of the General Terms and Conditions ("GTC") of the Current Agreement provides that the agreement will expire three (3) years after the effective date thereof. See Composite Exhibit "A", attached to the Petition. Section 2.2 of the GTC states that the parties will commence negotiations toward a follow-on Agreement not later than 180 days prior to the expiration date. See Composite Exhibit "A", attached to the Petition. Section 2.3 of the GTC states that if the parties are unable to negotiate satisfactory language for a follow-on agreement, then either party may petition the FPSC to establish an appropriate follow-on agreement. See Composite Exhibit "A", attached to the Petition. Section 2.3 of the GTC also contains an "evergreen provision" which states

that until the follow-on agreement becomes effective, BellSouth shall continue to provide services and elements pursuant to the terms, conditions and prices which are in effect under the Current Agreement. Thus notwithstanding any purported expiration date, the Current Agreement continues to be in full force and effect until such time as a follow-on Agreement becomes effective.

7. Section 16.1 of the GTC (including Attachment 1) states that disputes between the parties, which arise under the Current Agreement, shall be resolved through either voluntary negotiations between the two companies or arbitration before the CPR Institute for Dispute Resolution ("CPR"), and in accordance with the Federal Arbitration Act (9 USC § 1, et seq.). See Exhibit "B", attached to the Petition. Thus, any dispute over when and how the Current Agreement is finally terminated, can only be decided by a panel of commercial arbitrators in accordance with the CPR rules and the Federal Arbitration Act.

8. Although the Current Agreement was a product of the procedures set forth in 47 U.S.C. § 252, both the "evergreen provision" and the arbitration provisions were products of voluntary negotiations. Thus, both BellSouth and Supra had voluntarily agreed to be bound by both provisions found in the Current Agreement.

9. The Current Agreement is the main asset of Supra and allows Supra to operate and provide telecommunications services to end-users within the BellSouth service areas in the State of Florida. In fact, all of Supra's approximately 350,000 customers are provided telecommunications service under the Current Agreement. Thus, the Current Agreement is a valuable property right and interest of Supra and is currently the most important item of business property owned by Supra.

10. On or about June 9, 2000, and pursuant to the Current Agreement, Supra made a request upon BellSouth to negotiate a follow-on agreement. The parties undertook voluntary negotiations, but were unsuccessful in negotiating the agreement.

11. As a result, on or about September 1, 2000, BellSouth filed a petition with the FPSC seeking to arbitrate certain issues related to the follow-on interconnection agreement pursuant to 47 U.S.C. § 252(b). A true and correct copy of BellSouth's petition for arbitration is attached to the Petition as Exhibit "C."

12. Supra filed a response to BellSouth's petition, wherein Supra added further issues for negotiation in accordance with 47 U.S.C. § 252(b)(3). A true and correct copy of Supra's response is attached to the Petition as Exhibit "D."

13. Between the two parties, sixty-six (66) issues were identified for resolution by the FPSC pursuant to 47 U.S.C. § 252(4). All of the 66 issues can be found in the parties' petition and response.

14. Throughout the course of the proceedings before the FPSC, several issues were divided into sub-parts and two new issues were added for resolution by the FPSC. Further, by the time the evidentiary hearing was held in late September 2001, the parties had cumulatively identified 71 issues, which were numbered Issue A, Issue B, and Issues 1 through 66 (with issues 11, 25 and 32 having two parts each (i.e., 11A, 11B, 25A, 25B, 32A and 32B)).

15. Issue B was added by the FPSC on September 25, 2001, just before the evidentiary hearing. *Issue B posed the question as to which template was to be used for inserting the parties' voluntary agreements together with the Commission's resolution of issues.*

16. During the course of the proceeding, the parties thought they had reached tentative agreements on many of the issues set forth in the parties' petition and response. As a result of these tentative agreements, the parties agreed not to present these issues at the evidentiary hearing that took place on September 26-27, 2001. The issues for which BellSouth and Supra thought they had reached tentative agreements were identified in the proceeding as follows: Issue A, Issues 2, 3, 6, 7, 8, 9, 13, 14, 17, portions of 18, 25A, 25B, 26, 27, 30, 31, 35, 36, 37, 39, 41, 43, 44, 45, 48, 50, 51, 52, 53, 54, 55, 56, portions of 57, 58 and 64.

17. The agreements for some of the issues were documented, while others were oral. For those issues documented, proposed language was agreed upon for some of the issues, with the understanding that the concepts agreed upon needed to be incorporated into whatever template was ordered to be used in the follow-on agreement. BellSouth and Supra understood and agreed that implementation of the parties' agreements required a three-step process: a) insertion of any agreed language into appropriate locations of the follow-on agreement template; b) followed by the deletion of language throughout the template which may conflict with the parties' agreements; and c) finally, the creation of any other clarifying language necessary to accurately incorporate the parties' intent into the follow-on agreement. This three-step procedure was necessary because, at the time the parties agreed to all of the issues above, there was no agreement as to which template was to be used for the final version.

18. In addition, because of time considerations prior to the evidentiary hearing, the parties agreed in principal on some issues, with the understanding that details would be resolved at a later date. A primary example of these agreements involved

Exhibit "B" to Attachment 2 (of the new follow-on agreement). On numerous issues, the parties had agreed to reference a new Exhibit "B" to Attachment 2 (to the follow-on agreement), which was supposed to be a listing of numerous call flows. When the parties agreed upon language to resolve numerous issues, they made reference to this new Exhibit "B," which had not yet been agreed upon. In the spirit of attempted cooperation, the parties initially discussed some of the concepts that each side wanted to include in the call flow diagrams, and then agreed in principal to devise the form and content at a later date when the parties would have more time.

19. On March 26, 2002, the FPSC entered an order in which the FPSC resolved only those issues which the parties' had presented at the evidentiary hearing. Those issues addressed by the FPSC order were issues B, 1, 4, 5, 10, 11A, 11B, 12, 15, 16, portions of 18, 19, 20, 21, 22, 23, 24, 28, 29, 32A, 32B, 33, 34, 38, 40, 42, 46, 47, 49, portions of 57, 59, 60, 61, 62, 63, 65 and 66.

20. On July 1, 2002, the FPSC entered a second order which a) modified and/or reconsidered portions of the March 26, 2002 order and b) required the parties to submit a jointly-executed agreement by July 15, 2002.

21. During the course of attempting to negotiate the final language for the follow-on agreement, Supra learned that BellSouth had not incorporated many of the concepts or much of the agreed language regarding the issues that the parties had agreed not to include within the evidentiary hearing. And, despite feverish negotiations between BellSouth and Supra, the parties were unable to come to an agreement on appropriate language by July 15, 2002.

22. On July 15, 2002, Supra filed with FPSC a notice of good-faith compliance and a motion to compel BellSouth to continue negotiations toward a follow-on agreement. BellSouth filed a unilaterally-prepared interconnection agreement which had only been signed by BellSouth and which did not comply with the FPSC's prior rulings nor the parties' prior agreements. BellSouth also filed a motion requesting that the FPSC a) force Supra into either executing BellSouth's unilateral interconnection agreement or another approved agreement pursuant to 47 U.S.C. § 252(i) and b) declare the Current Agreement terminated.

23. On July 22, 2002, Supra filed with the FPSC an opposition to BellSouth's motion in which Supra clearly and specifically detailed the status of all issues in the proceeding and whether or not a dispute exists over BellSouth's proposed implementation in its unilateral interconnection agreement. A true and correct copy of Supra's July 22, 2002 response is attached to the Petition as Exhibit "E." Composite Exhibit "1" to the response (Exhibit E) is Supra's detailed listing of the status of all issues.

24. In the July 22, 2002, Motion, Supra expressly requested that the FPSC direct BellSouth to continue to negotiate in good faith. Supra also expressly requested that the FPSC grant Supra mediation regarding the merits for the unresolved issues that had been clearly and specifically set forth in the parties' petition and response in accordance with Section 252(b)(4). *See* Exhibit E, pg. 3 (where Supra writes: "this Commission [FPSC] should order BellSouth to return back to the negotiating table in order to resolve as many disputes as possible . . . Supra would also welcome Commission assisted mediation of this matter. In the event this Commission even considers granting

any of the relief in [BellSouth's] Emergency Motion, Supra asks that this Commission first conduct an evidentiary hearing of the factual matters asserted by the parties.”)

25. With respect to Supra's detailed listing of the issues (Composite Exhibit “1” to Exhibit E to this Petition), there are numerous disputes regarding BellSouth's proposed implementation of agreed issues and matters that were decided by the FPSC. With respect to the agreed issues (those in which the merits had **not** been resolved by the FPSC), disputes exists as to at least nine (9) issues. These issues were identified in the FPSC proceeding as Issues 6, 7, 13, 18 (agreed parts), 25B, 27, 37, 53 and 56. These issues cover important and material portions of the proposed follow-on agreement. The focus of this petition under Section 252(e)(5) revolves around the nine (9) specific issues in which the FPSC refused to resolve.

26. Notwithstanding, with respect to those issues that were resolved by the FPSC, the parties had disagreements over at least twenty-five (25) issues. These issues were identified in the FPSC proceeding as Issues 1, 10, 11A, 18 (arbitrated parts), 19, 21, 22, 23, 24, 28, 29, 32A, 32B, 33, 34, 38, 39, 40, 46, 47, 49, 57 (arbitrated parts), 59, 60 and 65. Disputes may also exist regarding issues which BellSouth had promised to make changes during negotiations over language to be used in the follow-on agreement, but which changes could not be verified by Supra prior to having to make the above filings with the FPSC.

27. On July 25, 2002, the staff of the FPSC filed a recommendation with the FPSC. The staff recommended that the FPSC grant BellSouth's July 15, 2002 Motion in part by declaring the Current Agreement terminated ten (10) days from the day of the vote. The day the Current Agreement would be considered terminated by the FPSC

would be August 16, 2002. The recommendation also recommended that the FPSC should refuse to consider the merits of the remaining unresolved issues which were not subject to an evidentiary hearing, but which were nevertheless properly set forth in the parties' petition and response. With respect to the "agreed upon" issues clearly and specifically set forth and presented in the parties' petition and response, the Staff wrote: "Supra has had ample opportunity to become familiar with BellSouth's agreement template, and ascertain what parts of the agreement would require modification, both to comply with the parties **agreed upon** and unarbitrated issues, as well as those decided by the Commission." (Emphasis added). A true and correct copy of the staff recommendation is attached to the Petition as Exhibit "F." See pg. 16-17 of Exhibit F.

28. In further justification of its recommended action to the FPSC the Staff wrote: "It is clear that no alternative language was filed by Supra on the required date, July 15, 2002. If Supra continued to disagree with BellSouth's interpretation of issues and inclusive language, Supra could have formulated its own language and submitted that to the Commission in an attempt to comply with the Commission's Order." See pg. 17-18 of Exhibit F. Notably, this subsequent comment does not address the agreed upon issues. The FPSC's authority to "pick and choose" language is narrowly focused on language that implements its order with respect to those issues, and those issues only, that had been the subject of a full and fair evidentiary hearing. Filing language with the FPSC and asking the FPSC to "pick and choose" would in effect be a waiver of Supra's right to the statutory requirements that ILECs negotiate in good faith, that the parties request mediation and if necessary arbitration for those issues which remain unresolved.

29. The recommendation also stated that if Supra does not execute either BellSouth's unilateral interconnection agreement or another approved agreement available for adoption under 47 U.S.C. § 252(i), that the relationship between BellSouth and Supra shall be terminated. Finally, the recommendation stated that no party shall be given the right to seek reconsideration of the ruling and that termination of the parties' Current Agreement shall take place prior to the issuance of a written order by the FPSC.

30. On Tuesday, August 6, 2002, the FPSC voted to adopt the staff recommendation without comment. A copy of the vote sheet is attached to the Petition as Exhibit "G." The staff recommendation adopted by the Commissioners specifically denied Supra's request for a mediation on the merits of the issues which remain unresolved and Supra's request for a further evidentiary hearing on the subject issues.

31. On Friday, August 9, 2002, the FPSC issued Order No. PSC-02-1096-FOF-TP, in which the state commission adopted the staff recommendation verbatim. A copy of the FPSC Order is attached to the Petition as Exhibit "H."

32. The FPSC's vote illegally terminated the Current Agreement between BellSouth and Supra. However, the Current Agreement, in conjunction with the Federal Arbitration Act, specifically requires BellSouth and Supra to arbitrate any alleged declaration of termination of the Current Agreement. A copy of the relevant portions of the Current Agreement (i.e. General Terms & Conditions and Attachment 1) is attached to the Petition as Exhibit "B."

33. Neither the FPSC nor BellSouth ever brought a proceeding under the Current Agreement seeking to have it declared terminated and Supra has not and does not

waive its rights to have any dispute under the Current Agreement resolved by a panel of arbitrators as required by the Current Agreement.

34. The vote by the FPSC that the Current Agreement is terminated, in the absence of a follow-on agreement between BellSouth and Supra effectively leaves Supra's approximately 350,000 innocent customers without local phone service.

35. In the present matter, Supra properly set forth its issues in the initial petition and response. Many issues were withdrawn for consideration prior to the first evidentiary hearing before the FPSC, after Supra relied upon BellSouth's assurances that these issues had been agreed to. BellSouth now refuses to even discuss language necessary to implement the "agreed upon" issues that have never been part of any evidentiary hearing. BellSouth's position is that Supra must accept language BellSouth has unilaterally chosen to implement the unresolved issues.

36. On August 9, 2002, the FPSC issued Order No. PSC-02-1096-FOF-TP. In this Order the FPSC expressly refused to consider the merits of the remaining unresolved issues which were not subject to an evidentiary hearing, but which were nevertheless properly set forth in the parties' petition and response. With respect to the "agreed upon" issues clearly and specifically set forth, the FPSC wrote: "Supra has had ample opportunity to become familiar with BellSouth's agreement template, and ascertain what parts of the agreement would require modification, both to comply with the parties 'agreed upon' and unarbitrated issues, as well as those decided by the Commission." (Emphasis added). See pg. 14-15 of Exhibit F.

37. The FPSC fails to address the specific issue raised in Supra's July 22, 2002 Motion: that BellSouth is now refusing to agree to language and concepts that

BellSouth had previously agreed to. BellSouth's position was clear that they would dictate the language with respect to the "agreed upon" issues. The FPSC decision in effect affirms BellSouth's dictatorial position and contrary to the protections and relief the 1996 Act was designed to confer on CLECs. Contrary to the FPSC's assertion – in the absence of an order forcing BellSouth to negotiate in good faith, and in the alternative forcing BellSouth to mediation and if necessary subsequent arbitration on the "agreed upon" issues - **no amount of time** afforded Supra would ever convince BellSouth to agree to language BellSouth did not want to agree to.

38. Given the FPSC's only comments on Supra's explicit request for assistance under the Act, it is evident that the FPSC was and is unwilling to act and to comply with its duty of resolving "all" issues clearly and specifically set forth in Supra's petition.

39. In furtherance of its justification of its overall decision the FPSC wrote the following: "It is clear that no alternative language was filed by Supra on the required date, July 15, 2002. If Supra continued to disagree with BellSouth's interpretation of issues and inclusive language, Supra could have formulated its own language and submitted that to the Commission in an attempt to comply with the Commission's Order." See pg. 15-16 of Exhibit F. In this comment, however, the FPSC does **not** even address the "agreed upon" issues at all.

40. The FPSC's authority to "pick and choose" language is narrowly focused on language that implements its order with respect to those issues, and those issues only, that have been the subject of a full and fair evidentiary hearing. Unlike the FCC, the FPSC does not possess regulations authorizing the state commission to utilize a form of

“final offer arbitration” as described in 47 C.F.R. 51.807(d). Filing language with the FPSC with respect to the “agreed upon” issues and asking the FPSC to “pick and choose” would in effect have been a waiver of Supra’s right to the statutory requirements that ILECs continue to negotiate in good faith,¹ that in the absence of an agreement that a CLEC may avail itself of mediation and if necessary arbitration for those issues which remain unresolved.

41. Supra’s petition focuses on whether the FPSC has acted and not on the quality of an alleged FPSC action. The comments from the FPSC Order demonstrate that no action was taken on the unresolved issues.

42. BellSouth’s refusal to include language consistent with the parties’ “agreed upon” issues is similar to the circumstances that arose in In the Matter of Petition of WorldCom, Inc., et al Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc., Docket Nos. 00-218, 00-249, 00-251, Memorandum Opinion and Order (adopted July 17, 2002).

43. In this above referenced case, the ILEC made certain concessions and compromises on several issues prior the evidentiary hearing. Some of these agreements were not incorporated into the proposed contract. With respect to these circumstances, the FCC wrote: “In those instances where one party clearly indicated that it supported or no longer opposed the other party’s conceptual proposal or contract language or indicated that it was willing to modify its own proposal to reflect the other party’s concerns, we

¹ Under 47 U.S.C. § 252(b)(5), the refusal of any party to continue negotiations after the State Utilities Commission has started to resolve the disputed issues, shall be considered to be a failure to negotiate in good faith as required by 47 U.S.C. § 251(c)(1).

determine that it is appropriate to direct the parties to submit language conforming to such statements.” *Id.* at para. 32.

44. In the present matter, BellSouth, likewise, clearly indicated that it did not oppose Supra’s conceptual proposals or proposed language. But for this understanding Supra would not have agreed to withdraw its issues properly set forth in its response filed with the FPSC. Under these circumstances (and in accordance with the precedent set forth above) BellSouth should have been required to submit language conforming to such agreements.

45. The FCC has found that an ILEC, like BellSouth, has superior bargaining power and little incentive to agree to terms that will strip BellSouth of further customers. The Act was designed to allow CLECs, like Supra, the opportunity to present its issues to a State commission, if a dispute in language existed or if the ILEC fails “to continue to negotiate in good faith.”

46. In this instance, BellSouth has refused to continue to negotiate at all. Supra has reasonably relied on BellSouth’s assurances in agreeing to withdraw issues properly placed before the FPSC. Supra formally requested that the FPSC order BellSouth to negotiate in good faith, order mediation and if necessary hold a further evidentiary hearing on all outstanding and unresolved issues.

FURTHER AFFLIANT SAYETH NOT.

DAVID A. NELSON

STATE OF FLORIDA)
) ss
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 15th, day of August
2002 by DAVID A. NILSON (individually and as Vice-President of Technology for
Supra Telecommunications & Information Systems, Inc.), who did take an oath, and who [
~~X~~ is personally known to me or who [] has produced _____ as
identification.

ESunday
Signature of Notary



Typed, Printed or Stamped Name of Notary

AGREEMENT

Sot. 1999 This Agreement, which shall become effective as of the 5th day of 1999, is entered into by and between Supra Telecommunications and Information Systems, Inc., ("Supra") a Florida corporation on behalf of itself, and BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns.

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, section 252(i) of the Act and 47 C.F.R. §51.809 require BellSouth to make available any individual interconnection, service, or network element provided under an agreement approved by the appropriate state regulatory body to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, Supra and BellSouth hereby agree as follows:

1. Supra and BellSouth shall adopt the interconnection agreement executed between BellSouth and AT&T Communications of the Southern States, Inc. for the state of Florida ("BellSouth/AT&T Interconnection Agreement") dated June 10, 1997 and any and all amendments to said agreement executed and approved by the appropriate state regulatory commission as of the date of the execution of this Agreement. The BellSouth/AT&T Interconnection Agreement and all amendments are attached hereto as Exhibit 1 and incorporated herein by this reference. The adoption of this agreement with amendment(s) consists of the following:

ITEM	NO. PAGES
Adoption Papers	3
Title Page	1
Table of Contents	3
General Terms and Conditions	66
Attachment 1	9
Attachment 2	109
Attachment 3	49
Attachment 4	8
Attachment 5	5
Attachment 6	27
Attachment 7	49
Attachment 8	6



PCF
09/29/99

Attachment 9	4
Attachment 10	7
Attachment 11	9
Attachment 12	18
Attachment 13	12
Attachment 14	2
Attachment 15	12
Letter dated 06/10/97	1
Replacement pages	21
Letter dated 08/21/97	1
Replacement pages	5
Letter dated 07/24/98	1
Replacement pages	8
Amendment	4
TOTAL	440

2. The term of this Agreement shall be from the effective date as set forth above and shall expire as set forth in section 2 of the BellSouth/AT&T Interconnection Agreement. For the purposes of determining the expiration date of this Agreement pursuant to section 2 of the BellSouth/AT&T Interconnection Agreement, the effective date shall be June 10, 1997.
3. Supra shall accept and incorporate any amendments to the BellSouth/AT&T Interconnection Agreement executed as a result of any final judicial, regulatory, or legislative action.
4. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, addressed to:

BellSouth Telecommunications, Inc.

CLEC Account Team
9th Floor
600 North 19th Street
Birmingham, Alabama 35203

And

General Attorney - COU
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

**Supra Telecommunications and
Information Systems, Inc.**

PLT

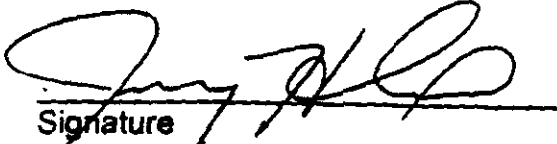
09/29/99

Olukayode Ramos
2620 SW 27th Ave
Miami, FL 33133

Or at such other address as the intended recipient previously shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mail.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

BellSouth Telecommunications, Inc.


Signature

Jerry D. Hendrix
Name

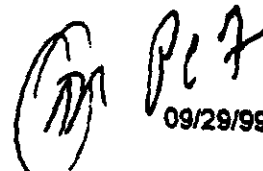
10/5/99
Date

Supra Telecommunications and
Information Systems, Inc.


Signature

O. A. Ramos
Name

10/04/99
Date


09/29/99

AGREEMENT

between

BellSouth Telecommunications, Inc.

and AT&T Communications of the Southern States, Inc.

Effective Date: June 10, 1997

FLORIDA

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
AGREEMENT	1
PREFACE	1
RECITALS	1
DEFINITIONS and ACRONYMS	1
GENERAL TERMS AND CONDITIONS	2
1. Provision of Local Service and Unbundled Network Elements.....	2
2. Term of Agreement	4
3. Termination of Agreement; Transitional Support.....	4
4. Good Faith Performance	4
5. Option to Obtain Local Services, Network Elements and Combinations Under Other Agreements	5
6. Responsibility of Each Party.....	5
7. Governmental Compliance	5
8. Responsibility For Environmental Contamination.....	6
9. Regulatory Matters	7
10. Liability and Indemnity.....	8
11. Audits and Inspections	10
12. Remedies for Failure to Meet DMOQs	12
13. Customer Credit History	12
14. Force Majeure	12
15. Certain Federal, State and Local Taxes	13
16. Alternative Dispute Resolution	16
17. Notices	17

18. Confidentiality and Proprietary Information	17
19. Branding	19
20. Directory Listings Requirements	20
21. Subscriber List Information/Local Number Portability.....	21
22. Miscellaneous	23
Part I: Local Services Resale.....	27
23. Telecommunications Services Provided for Resale	27
24. General Terms and Conditions for Resale	28
25. Requirements for Specific Services	29
26. DELETED.....	35
27. Support Functions	36
28. Service Functions.....	39
PART II: UNBUNDLED NETWORK ELEMENTS	48
29. Introduction	48
30. Unbundled Network Elements.....	48
PART III: ANCILLARY FUNCTIONS	51
31. Introduction	51
32. BellSouth Provision of Ancillary Functions	51
33. Standards for Ancillary Functions.....	51
PART IV: PRICING.....	53
34. General Principles	55
35. Local Service Resale.....	55
36. Unbundled Network Elements.....	55
37. Compensation For Call and Transport Termination	55
38. Ancillary Functions	55